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HOUSE BILL 653

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ted Hobbs

AN ACT

RELATING TO PUBLIC REGULATION; TRANSFERRING THE INSPECTION AND ENFORCEMENT POWERS OVER PIPELINES FROM THE PUBLIC REGULATION COMMISSION TO THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; TRANSFERRING THE REGULATION OF AMBULANCE SERVICES FROM THE PUBLIC REGULATION COMMISSION TO THE DEPARTMENT OF HEALTH; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 5-1-1 NMSA 1978 (being Laws 1967, Chapter 167, Section 1, as amended) is amended to read:

"5-1-1. POLITICAL SUBDIVISIONS--AMBULANCE SERVICE. --

A. A municipality or county may:

[~~A.~~] (1) provide ambulance service to transport sick or injured persons to a place of treatment in

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1 the absence of an established ambulance service only as
2 authorized by the [~~state corporation commission~~] department of
3 health;

4 [B-] (2) contract with other political
5 subdivisions or with private ambulance services for the
6 operation of its ambulance service;

7 [C-] (3) lease ambulances and other equipment
8 necessary to the operation of its ambulance service;

9 [D-] (4) in the course of its operation of an
10 ambulance service, proceed to the scene of a disaster beyond
11 its subdivision boundaries when requested, providing no local
12 established ambulance service is available or, if one exists,
13 such local ambulance service deems [~~their~~] its capacity
14 inadequate or insufficient for emergency transportation of the
15 disaster victims; and

16 [E-] (5) transport sick or injured persons
17 from the subdivision boundaries to any place of treatment.

18 [~~and~~

19 F-] B. No personal action shall be maintained in
20 [~~any~~] a court of this state against [~~any~~] a member or officer
21 of a political subdivision for [~~any~~] a tort or act done, or
22 attempted to be done, when done by the authority of the
23 political subdivision or in execution of its orders under this
24 section. In all such cases, political subdivisions shall be
25 responsible. [~~Any~~] A member or officer of the political

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1 subdivision may plead the provisions of this section in bar of
2 such action whether it is now pending or hereafter commenced. "

3 Section 2. Section 24-10B-3 NMSA 1978 (being Laws 1993,
4 Chapter 161, Section 2) is amended to read:

5 "24-10B-3. DEFINITIONS. -- As used in the Emergency Medical
6 Services Act:

7 A. "academy" means a separately funded emergency
8 medical services training program administered through the
9 department of emergency medicine of the university of New
10 Mexico school of medicine;

11 B. "advance directive" means a written instruction,
12 such as a living will or durable power of attorney for health
13 care, recognizable under state law and relating to the
14 provision of health care when an individual is incapacitated;

15 C. "advanced life support" means advanced pre-
16 hospital and interfacility care and treatment, including basic
17 and intermediate life support, as prescribed by regulation,
18 which may be performed only by an individual licensed as a
19 paramedic by the bureau and operating under medical direction;

20 D. "air ambulance service" means ~~[any]~~ a
21 governmental or private service that provides air
22 transportation specifically designed to accommodate the medical
23 needs of a person who is ill, injured or otherwise mentally or
24 physically incapacitated and who requires in-flight medical
25 supervision;

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1 E. "approved emergency medical services training
2 program" means an emergency medical services training program
3 that is sponsored by a post-secondary educational institution,
4 is accredited by the joint review committee on educational
5 programs or active in the accreditation process, as verified by
6 the chair of the joint review committee on educational
7 programs, or is approved by the joint organization on education
8 and participates in the joint organization on education;

9 F. "basic life support" means pre-hospital and
10 interfacility care and treatment, as prescribed by regulation,
11 [~~which~~] that can be performed by all licensed emergency medical
12 technicians;

13 G. "bureau" means the primary care and emergency
14 medical services bureau of the public health division of the
15 department [~~of health~~];

16 H. "certified emergency medical services first
17 responder" means a person who is certified by the bureau and
18 who functions within the emergency medical services system to
19 provide initial emergency aid, but not basic, intermediate or
20 advanced life support, to a person in need of medical
21 assistance;

22 I. "critical incident stress debriefing program"
23 means a program of preventive education and crisis intervention
24 intended to reduce the negative effects of critical stress on
25 emergency responders;

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1 J. "curricula" means programs of study, the minimum
2 content of which has been developed by the joint organization
3 on education, for the initial and mandatory refresher training
4 of emergency medical technicians and certified emergency
5 medical services first responders;

6 K. "department" means the department of health;

7 L. "emergency medical dispatcher" means a person
8 who is trained and certified pursuant to Subsection [F] G of
9 Section 24-10B-4 NMSA 1978 to receive calls for emergency
10 medical assistance, provide pre-arrival medical instructions,
11 dispatch emergency medical assistance and coordinate its
12 response;

13 M. "emergency medical services" means the services
14 rendered by emergency medical technicians, certified emergency
15 medical services first responders or emergency medical
16 dispatchers in response to an individual's need for immediate
17 medical care to prevent loss of life or aggravation of physical
18 or psychological illness or injury;

19 N. "emergency medical services system" means a
20 coordinated system of health care delivery that includes
21 community education and prevention programs, centralized access
22 and emergency medical dispatch, trained first responders,
23 medical-rescue services, ambulance services, hospital emergency
24 departments and specialty care hospitals that respond to the
25 needs of the acutely sick and injured;

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1 O. "emergency medical technician" means a health
2 care provider who has been licensed to practice by the bureau;

3 P. "intermediate life support" means certain
4 advanced pre-hospital and interfacility care and treatment,
5 including basic life support, as prescribed by regulation,
6 [~~which~~] that may be performed only by an individual licensed by
7 the bureau and operating under medical direction;

8 Q. "joint review committee" means the joint review
9 committee on educational programs for the emergency medical
10 technician-paramedic, a nonprofit organization incorporated in
11 the state of Massachusetts;

12 R. "medical control" means supervision provided by
13 or under the direction of physicians to providers by written
14 protocol or direct communications;

15 S. "medical direction" means guidance or
16 supervision provided by a physician to a provider or emergency
17 medical services system and [~~which~~] that includes authority
18 over and responsibility for emergency medical dispatch, direct
19 patient care and transport of patients, arrangements for
20 medical control and all other aspects of patient care delivered
21 by a provider;

22 T. "medical-rescue service" means a provider that
23 is part of the emergency medical services system, but not
24 subject to the authority of the [~~state corporation commission~~]
25 department under the Ambulance Standards Act, and [~~which~~] that

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1 may be dispatched to the scene of an emergency to provide
2 rescue or medical care;

3 U. "physician" means a doctor of medicine or doctor
4 of osteopathy who is licensed or otherwise authorized to
5 practice medicine or osteopathic medicine in New Mexico;

6 V. "protocol" means a predetermined, written
7 medical care plan and includes standing orders;

8 W. "provider" means a person or entity delivering
9 emergency medical services;

10 X. "regional office" means a regional emergency
11 medical services planning and development agency formally
12 recognized and supported by the bureau;

13 Y. "secretary" means the secretary of health;

14 Z. "special skills" means a set of procedures or
15 therapies that are beyond the usual scope of practice of a
16 given level of life support and that have been approved by the
17 medical direction committee for use by a specified provider;
18 and

19 AA. "state emergency medical services medical
20 director" means a physician employed by the bureau to provide
21 overall medical direction to the statewide emergency medical
22 services program, whose duties include serving as a liaison to
23 the medical community and chairing the medical direction
24 committee."

25 Section 3. Section 24-10B-4 NMSA 1978 (being Laws 1983,

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1 Chapter 190, Section 4, as amended) is amended to read:

2 "24-10B-4. BUREAU--DUTIES.--The bureau is designated as
3 the lead agency for the emergency medical services system and
4 shall establish and maintain a program for regional planning
5 and development, improvement, expansion and direction of
6 emergency medical services throughout the state, including:

7 A. design, development, implementation and
8 coordination of communications systems to join the personnel,
9 facilities and equipment of a given region or system that will
10 allow for medical control of pre-hospital or interfacility
11 care;

12 [~~B. provision of technical assistance to the public~~
13 ~~regulation commission for further development and~~
14 ~~implementation of standards for certification of ambulance~~
15 ~~services, vehicles and equipment;~~

16 ~~C.] B. development of requirements for the
17 collection of data and statistics to evaluate the availability,
18 operation and quality of providers in the state;~~

19 [~~D.] C. adoption of [~~regulations~~] rules for medical
20 direction of a provider or emergency medical services system
21 upon the recommendation of the medical direction committee,
22 including:~~

23 (1) development of model guidelines for
24 medical direction of all components of an emergency medical
25 services system;

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1 (2) a process for notifying the bureau of the
2 withdrawal of medical control by a physician from a provider;
3 and

4 (3) specific requirements for medical
5 direction of intermediate and advanced life support personnel
6 and basic life support personnel with special skills approval;

7 [~~E.~~] D. maintenance of a list of approved emergency
8 medical services training programs, the graduates of which
9 shall be the only New Mexico emergency medical services
10 students eligible to apply for emergency medical technician
11 licensure or certified emergency medical services first
12 responder certification;

13 [~~F.~~] E. approval of continuing education programs
14 for emergency medical services personnel;

15 [~~G.~~] F. adoption of [~~regulations~~] rules pertaining
16 to the training and certification of emergency medical
17 dispatchers and their instructors;

18 [~~H.~~] G. adoption of [~~regulations~~] rules based upon
19 the recommendations of the trauma advisory committee, for
20 implementation and monitoring of a statewide, comprehensive
21 trauma care system, including:

22 (1) minimum standards for designation or
23 retention of designation as a trauma center or a participating
24 trauma facility;

25 (2) pre-hospital care management guidelines

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1 for the triage and transportation of traumatized persons;

2 (3) establishment for interfacility transfer
3 criteria and transfer agreements;

4 (4) standards for collection of data relating
5 to trauma system operation, patient outcome and trauma
6 prevention; and

7 (5) creation of a state trauma care plan;

8 [~~F.~~] H. adoption of [~~regulations~~] rules, based upon
9 the recommendations of the air transport advisory committee,
10 for the certification of air ambulance services;

11 [~~J.~~] I. adoption of [~~regulations~~] rules pertaining
12 to authorization of providers to honor advance directives to
13 withhold or terminate care in certain pre-hospital or
14 interfacility circumstances, as guided by local medical
15 protocols;

16 [~~K.~~] J. development of guidelines, with
17 consultation from the state fire marshal, pertaining to the
18 operation of medical-rescue services within the emergency
19 medical services system;

20 [~~L.~~] K. operation of a critical incident stress
21 debriefing program for emergency responders utilizing
22 specifically trained volunteers who shall be considered public
23 employees for the purposes of the Tort Claims Act when called
24 upon to perform a debriefing; and

25 [~~M.~~] L. adoption of rules to establish a cardiac

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1 arrest targeted response program pursuant to the Cardiac Arrest
2 Response Act, including registration of automated external
3 defibrillator programs, maintenance of equipment, data
4 collection, approval of automated external defibrillator
5 training programs and a schedule of automated external
6 defibrillator program registration fees. "

7 Section 4. Section 24-10B-5 NMSA 1978 (being Laws 1983,
8 Chapter 190, Section 5, as amended) is amended to read:

9 "24-10B-5. PERSONNEL LICENSURE REQUIRED. --

10 A. The department shall by regulation adopt and
11 enforce licensure and certification requirements, including
12 minimum standards for training, continuing education and
13 disciplinary actions consistent with the Uniform Licensing Act,
14 for all persons who provide emergency medical services within
15 the state, irrespective of whether the services are
16 remunerated. Such regulation shall include authorization for
17 the bureau to issue at least annually an updated list of
18 skills, techniques and medications approved for use at each
19 level of life support. [~~When setting requirements for
20 licensure of persons also subject to the Ambulance Standards
21 Act, the bureau shall consult with the state corporation
22 commission.~~]

23 B. In addition to the requirements specified in
24 Subsection A of this section, the department may:

25 (1) prohibit the use of "emergency medical

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1 dispatcher", "emergency medical technician", "certified
2 emergency medical services first responder", "paramedic" or
3 similar terms connoting expertise in providing emergency
4 medical services by any person not licensed or certified under
5 the Emergency Medical Services Act;

6 (2) deny, suspend or revoke licensure or
7 certification in accordance with the provisions of the Uniform
8 Licensing Act; and

9 (3) establish a schedule of reasonable fees
10 for application, examination, licensure or certification and
11 regular renewal thereof."

12 Section 5. Section 27-5-4 NMSA 1978 (being Laws 1965,
13 Chapter 234, Section 4, as amended by Laws 2001, Chapter 30,
14 Section 1, Laws 2001, Chapter 272, Section 1 and also by Laws
15 2001, Chapter 280, Section 1) is amended to read:

16 "27-5-4. DEFINITIONS.--As used in the Indigent Hospital
17 and County Health Care Act:

18 A. "ambulance provider" or "ambulance service"
19 means a specialized carrier based within the state authorized
20 [~~under~~] pursuant to provisions and subject to limitations as
21 provided in individual carrier certificates issued by the
22 [~~public regulation commission~~] department of health to
23 transport persons alive, dead or dying en route by means of
24 ambulance service. The rates and charges established by public
25 regulation ~~commission~~ tariff shall govern as to allowable cost.

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1 Also included are air ambulance services approved by the board.
2 The air ambulance service charges shall be filed and approved
3 pursuant to Subsection D of Section 27-5-6 NMSA 1978 and
4 Section 27-5-11 NMSA 1978;

5 B. "board" means a county indigent hospital and
6 county health care board;

7 C. "indigent patient" means a person to whom an
8 ambulance service, a hospital or a health care provider has
9 provided medical care, ambulance transportation or health care
10 services and who can normally support himself and his
11 dependents on present income and liquid assets available to him
12 but, taking into consideration this income and those assets and
13 his requirement for other necessities of life for himself and
14 his dependents, is unable to pay the cost of the ambulance
15 transportation or medical care administered or both. If
16 provided by resolution of a board, it shall not include [any]
17 person whose annual income together with his spouse's annual
18 income totals an amount that is fifty percent greater than the
19 per capita personal income for New Mexico as shown for the most
20 recent year available in the survey of current business
21 published by the United States department of commerce. [Every]
22 A board that has a balance remaining in the fund at the end of
23 a given fiscal year shall consider and may adopt at the first
24 meeting of the succeeding fiscal year a resolution increasing
25 the standard for indigency. The term "indigent patient"

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1 includes a minor who has received ambulance transportation or
2 medical care or both and whose parent or the person having
3 custody of that minor would qualify as an indigent patient if
4 transported by ambulance or admitted to a hospital for care or
5 treated by a health care provider or all three;

6 D. "hospital" means a general or limited hospital
7 licensed by the department of health, whether nonprofit or
8 owned by a political subdivision, and may include by resolution
9 of a board the following health facilities if licensed or, in
10 the case of out-of-state hospitals, approved, by the department
11 of health:

12 (1) for-profit hospitals;

13 (2) state-owned hospitals; or

14 (3) licensed out-of-state hospitals where
15 treatment provided is necessary for the proper care of an
16 indigent patient when that care is not available in an in-state
17 hospital;

18 E. "cost" means all allowable ambulance
19 transportation costs, medical care costs or costs of providing
20 health care services, to the extent determined by resolution of
21 a board, for an indigent patient. Allowable costs shall be
22 determined in accordance with a uniform system of accounting
23 and cost analysis as determined by regulation of a board, which
24 includes cost of ancillary services but shall not include the
25 cost of servicing long-term indebtedness of a hospital, health

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1 care provider or ambulance service;

2 F. "fund" means a county indigent hospital claims
3 fund;

4 G. "medicaid eligible" means a person who is
5 eligible for medical assistance from the department;

6 H. "county" means ~~any~~ a county, except a class A
7 county, with a county hospital operated and maintained pursuant
8 to a lease with a state educational institution named in
9 Article 12, Section 11 of the constitution of New Mexico;

10 I. "department" means the human services
11 department;

12 J. "sole community provider hospital" means:

13 (1) a hospital that is a sole community
14 provider hospital under the provisions of the federal medicare
15 guidelines established in 42 C.F.R. 412.92 pursuant to Title 18
16 of the federal Social Security Act; or

17 (2) an acute care general hospital licensed by
18 the department of health that is qualified, pursuant to rules
19 adopted by the state agency primarily responsible for the
20 medicaid program, to receive distributions from the sole
21 community provider fund;

22 K. "drug rehabilitation center" means an agency of
23 local government, a state agency, a private nonprofit entity or
24 combination thereof that operates drug abuse rehabilitation
25 programs that meet the standards and requirements set by the

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1 department of health;

2 L. "alcohol rehabilitation center" means an agency
3 of local government, a state agency, a private nonprofit entity
4 or combination thereof that operates alcohol abuse
5 rehabilitation programs that meet the standards set by the
6 department of health;

7 M. "mental health center" means a not-for-profit
8 center that provides outpatient mental health services that
9 meet the standards set by the department of health;

10 N. "health care provider" means:

11 (1) a nursing home;

12 (2) an in-state home health agency;

13 (3) an in-state licensed hospice;

14 (4) a community-based health program operated
15 by a political subdivision of the state or other nonprofit
16 health organization that provides prenatal care delivered by
17 New Mexico licensed, certified or registered health care
18 practitioners;

19 (5) a community-based health program operated
20 by a political subdivision of the state or other nonprofit
21 health care organization that provides primary care delivered
22 by New Mexico licensed, certified or registered health care
23 practitioners;

24 (6) a drug rehabilitation center;

25 (7) an alcohol rehabilitation center;

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1 (8) a mental health center; or

2 (9) a licensed medical doctor, osteopathic
3 physician, dentist, optometrist or expanded practice nurse when
4 providing services in a hospital or outpatient setting that are
5 necessary for conditions that endanger the life of or threaten
6 permanent disability to an indigent patient;

7 O. "health care services" means all treatment and
8 services designed to promote improved health in the county
9 indigent population, including primary care, prenatal care,
10 dental care, provision of prescription drugs, preventive care
11 or health outreach services, to the extent determined by
12 resolution of the board;

13 P. "planning" means the development of a countywide
14 or multicounty health plan to improve and fund health services
15 in the county based on the county's needs assessment and
16 inventory of existing services and resources and that
17 demonstrates coordination between the county and state and
18 local health planning efforts; and

19 Q. "commission" means the New Mexico health policy
20 commission. "

21 Section 6. Section 65-6-2 NMSA 1978 (being Laws 1974,
22 Chapter 82, Section 2, as amended) is amended to read:

23 "65-6-2. DEFINITIONS. --As used in the Ambulance Standards
24 Act:

25 A. "ambulance" means a vehicle, including motor

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1 vehicles or watercraft, designed and used or intended to be
2 used for the transportation of sick or injured persons;

3 B. "driver" means a person who, on a regular or
4 irregular basis, either paid or voluntary, serves as the
5 operator of an ambulance;

6 C. "attendant" means a person who, on a regular or
7 irregular basis, either paid or voluntary, serves as an
8 assistant to the driver in the operation of [~~the~~] an ambulance;
9 and

10 [~~D. "commission" means the public regulation~~
11 ~~commission]~~

12 D. "department" means the department of health. "

13 Section 7. Section 65-6-4 NMSA 1978 (being Laws 1974,
14 Chapter 82, Section 4) is amended to read:

15 "65-6-4. [~~CORPORATION COMMISSION]~~ DEPARTMENT-- DUTIES. --

16 A. The [~~corporation commission in accordance with~~
17 ~~its responsibilities to regulate common carriers, shall, within~~
18 ~~one year of the effective date of this Act, hold public~~
19 ~~hearings as prescribed in Article 27 of Chapter 64 NMSA 1953~~
20 ~~and]~~ department shall adopt regulations:

21 [~~A.~~] (1) for the establishment of reasonable,
22 flexible standards for ambulances, including but not limited
23 to:

24 [~~(1)~~] (a) vehicle design;

25 [~~(2)~~] (b) health and safety equipment to

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1 be maintained and used in ambulances;

2 [~~(3)~~] (c) procedures for the operation
3 of ambulances; and

4 [~~(4)~~] (d) at least annual inspection of
5 [~~ambulances~~] ambulances; and

6 [~~B.~~] (2) for the licensure of all [~~ambulance~~]
7 drivers and attendants, to include:

8 [~~(1) — minimum~~] (a) minimum training
9 requirements to include basic and advanced red cross and such
10 other available training as the [~~commission~~] department finds
11 reasonable and in the best interests of the public; and

12 [~~(2)~~] (b) a written and practical
13 examination of competence limited to that material, information
14 and training required of [~~ambulance~~] drivers and attendants,
15 respectively, in the regulations adopted by the [~~corporation~~
16 ~~commission~~] department.

17 B. In establishing standards for ambulances, the
18 [~~commission~~] department shall give serious consideration to the
19 vehicle needs and limitations imposed by the topography and
20 road and weather conditions of various localities. Further,
21 the [~~commission~~] department shall take into consideration the
22 resources of the various communities, institutions and
23 sponsoring organizations providing ambulance service to the
24 public. "

25 Section 8. Section 65-6-5 NMSA 1978 (being Laws 1974,

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1 Chapter 82, Section 5) is amended to read:

2 "65-6-5. APPLICABILITY OF ACT. -- Upon the effective date
3 of the Ambulance Standards Act, all ambulances operating in New
4 Mexico, except those excluded in Section [6] 65-6-6 NMSA 1978,
5 shall be issued a three-year certificate of public convenience
6 and necessity by the [~~state corporation commission~~]
7 department. "

8 Section 9. Section 70-3-12 NMSA 1978 (being Laws 1969,
9 Chapter 71, Section 2, as amended) is amended to read:

10 "70-3-12. DEFINITIONS. -- As used in the Pipeline Safety
11 Act:

12 A. "person" means an individual, firm, joint
13 venture, partnership, corporation, association, state,
14 municipality, political subdivision, cooperative association,
15 joint stock association or any combination thereof and includes
16 any receiver, trustee, assignee or personal representative
17 thereof;

18 B. "commission" means the public regulation
19 commi ssi on;

20 C. "division" means the oil conservation division
21 of the energy, minerals and natural resources department;

22 [~~C.~~] D. "gas" means natural gas, flammable gas or
23 gas that is toxic or corrosive;

24 [~~D.~~] E. "oil" means crude oil and liquid
25 hydrocarbons and manufactured products derived from either;

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1 ~~[E.]~~ F. "transportation of gas" means the
2 gathering, transmission or distribution of gas by pipeline or
3 its storage, except that it shall not include the gathering of
4 gas in those rural locations that lie outside the limits of
5 ~~[any]~~ a municipality or unincorporated city, town or village or
6 ~~[any]~~ a residential or commercial area such as a subdivision, a
7 business or shopping center, a community development or ~~[any]~~
8 similar populated area that the commission may define by order
9 as a nonrural area;

10 ~~[F.]~~ G. "transportation of oil" means the
11 transmission of oil by pipeline, except pipelines operated
12 exclusively for the gathering of oil in ~~[any]~~ a field or area
13 or pipelines constituting a part of ~~[any]~~ a tank farm, plant
14 facilities of ~~[any]~~ a processing plant, gasoline plant,
15 refinery, carbon-black plant, recycling system or similar
16 operations;

17 ~~[G.]~~ H. "gas pipeline facilities" means new and
18 existing pipeline rights of way and any equipment, facility or
19 structure used in the transportation of gas or the treatment of
20 gas during the course of transportation;

21 ~~[H.]~~ I. "oil pipeline facilities" means new and
22 existing pipeline rights of way and any equipment, facility or
23 structure used in the transportation of oil; and

24 ~~[I.]~~ J. "intrastate pipeline facilities" means oil
25 pipeline facilities or gas pipeline facilities within the state

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1 that are not gas pipeline facilities subject to the
2 jurisdiction of the federal energy regulatory commission
3 pursuant to the federal Natural Gas Act or oil pipeline
4 facilities used in the transportation of oil in interstate or
5 foreign commerce, except that it shall include pipeline
6 facilities within the state that transport gas from an
7 interstate gas pipeline to a direct sales customer within the
8 state purchasing gas for its own consumption."

9 Section 10. Section 70-3-13 NMSA 1978 (being Laws 1969,
10 Chapter 71, Section 3, as amended) is amended to read:

11 "70-3-13. POWERS AND DUTIES OF COMMISSION. -- The
12 commi ssi on:

13 A. shall promulgate, amend [~~enforce~~] and repeal
14 reasonable [~~regulations~~] rules establishing minimum safety
15 standards for the transportation of oil, hazardous liquids as
16 defined in 49 CFR 195.2 and gas and for the design,
17 installation, inspection, testing, construction, extension,
18 operation, replacement and maintenance, including internal and
19 external surveillance for pipe integrity and installation of
20 emergency flow restricting devices, of oil, hazardous liquid
21 and gas pipeline facilities as may be required by federal law.
22 Safety standards shall not be applicable to oil, hazardous
23 liquid or gas pipeline facilities in existence on the date the
24 safety standards are adopted; provided, however, that whenever
25 the [~~commission~~] division upon investigation and hearing

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1 determines that an oil, hazardous liquid or gas pipeline
2 facility is hazardous to life or property, [~~it~~] the division
3 may require the person operating the oil, hazardous liquid or
4 gas pipeline facility to take the steps necessary to remove the
5 hazards. Safety regulations shall be practicable and designed
6 to meet the need for pipeline safety. Safety rules promulgated
7 for oil, hazardous liquid and gas pipeline facilities or the
8 transportation of oil, hazardous liquids and gas shall be
9 consistent with federal law and rules. Safety rules adopted
10 hereunder shall not apply to [~~any~~] transportation of oil or oil
11 pipeline facilities regulated by the federal department of
12 transportation. Rules adopted pursuant to the Pipeline Safety
13 Act shall substantially conform to federal pipeline safety
14 rules;

15 B. may advise, consult, contract and cooperate with
16 [~~any~~] an agency of the federal government or [~~any other~~]
17 another state in projects of common interest in the regulation
18 of safety of oil, hazardous liquid and gas pipeline facilities
19 and the transportation of oil, hazardous liquids and gas and
20 administer the authority delegated to the commission by [~~any~~] a
21 contract with the federal government or [~~any~~] an agency
22 thereof; and

23 C. may accept, receive, apply for or administer
24 grants or other funds or gifts from public or private agencies,
25 including the federal government, or from [~~any other~~] another

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1 person

2 ~~[D. may make investigations consistent with the~~
3 ~~Pipeline Safety Act and, in connection therewith, enter private~~
4 ~~or public property at all reasonable times. The results of~~
5 ~~investigations shall be reduced to writing if any enforcement~~
6 ~~action is contemplated and a copy thereof furnished to the~~
7 ~~operator of the oil, hazardous liquid or gas pipeline~~
8 ~~facilities investigated before any enforcement action is~~
9 ~~initiated; and~~

10 ~~E. may require persons subject to the Pipeline~~
11 ~~Safety Act to maintain the records, file the reports and~~
12 ~~develop the plans for inspection and maintenance of oil,~~
13 ~~hazardous liquid or gas pipeline facilities as the commission~~
14 ~~may, by rule, require for proper administration of the Pipeline~~
15 ~~Safety Act; provided, however, that the use of the term "rights~~
16 ~~of way" does not authorize the commission to prescribe the~~
17 ~~location or routing of any oil, hazardous liquid or gas~~
18 ~~pipeline facility]. "~~

19 Section 11. Section 70-3-18 NMSA 1978 (being Laws 1969,
20 Chapter 71, Section 8) is amended to read:

21 "70-3-18. COMPLIANCE. --

22 A. [Each] A person who engages in the
23 transportation of oil or gas or who owns or operates oil or gas
24 pipeline facilities shall:

25 (1) at all times after the effective date of

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1 any regulation, comply with the requirements of the regulation;

2 (2) comply with any plan of inspection and
3 maintenance required to be filed with the [~~commission~~] division
4 by the person; and

5 (3) permit the [~~commission~~] division access to
6 or the copying of pertinent records and make reports or provide
7 information to the [~~commission~~] division as may be reasonably
8 required and permit entry to or inspection of its gas or oil
9 pipeline facilities by the [~~commission~~] division.

10 B. Nothing in the Pipeline Safety Act shall affect
11 the common law or statutory tort liability of any person. "

12 Section 12. Section 70-3-19 NMSA 1978 (being Laws 1969,
13 Chapter 71, Section 9, as amended) is amended to read:

14 "70-3-19. ENFORCEMENT--PENALTIES.--

15 A. If as a result of an investigation the
16 [~~commission~~] division has good cause to believe that [~~any~~] a
17 person is violating any provision of Subsection A of Section
18 70-3-18 NMSA 1978 or [~~any~~] a regulation adopted by the
19 ~~commission~~ under the Pipeline Safety Act, the [~~commission~~]
20 division shall, when practicable and except in the case of a
21 knowing and willful violation, give the person notice of the
22 violation and an opportunity to comply. If the [~~commission~~]
23 division is unable within a reasonable time to obtain voluntary
24 cooperation to prevent the continuing violation, the division
25 shall report the violation to the commission. The [~~commission~~]

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1 division ~~may~~ then apply for an injunction in the district court
2 of the county in which the violation occurs to secure
3 compliance. The failure to give notice and afford an
4 opportunity to comply shall not preclude the granting of
5 injunctive relief.

6 B. In [~~any~~] an action to enforce the provisions of
7 the Pipeline Safety Act or [~~any~~] a regulation of the
8 ~~commission~~, the [~~commission~~] division and the state shall be
9 represented by the attorney general.

10 C. The trial before the district court shall be
11 before the court without jury, and the court shall enter
12 judgment and orders enforcing the judgment as the public
13 interest and equities of the case ~~may~~ require.

14 D. [~~Any~~] A person owning or operating gas pipeline
15 facilities or engaged in the transportation of gas or owning or
16 operating oil pipeline facilities or engaged in the
17 transportation of oil who has been determined by order of the
18 ~~commission~~ after hearing to have violated [~~any~~] a provision of
19 Subsection A of Section 70-3-18 NMSA 1978 or [~~any~~] a regulation
20 promulgated under the Pipeline Safety Act applicable to
21 intrastate pipeline facilities shall be subject to a civil
22 penalty in an amount not to exceed twenty-five thousand dollars
23 (\$25,000) for each violation for each day that the violation
24 persists, except that the ~~maximum~~ civil penalty shall not
25 exceed five hundred thousand dollars (\$500,000) for [~~any~~] a

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1 related series of violations.

2 E. In determining the amount of the penalty, the
3 [~~commission~~] trial court shall consider the nature,
4 circumstances and gravity of the violation and, with respect to
5 the person found to have committed the violation, the degree of
6 culpability, [~~any~~] a history of prior violations, the effect on
7 ability to continue to do business, any good faith in
8 attempting to achieve compliance, ability to pay the penalty
9 and such other matters as justice may require.

10 F. Judicial review of [~~any~~] a provision of this
11 section may be accomplished in the same manner as is found in
12 Section 70-3-15 NMSA 1978.

13 G. [~~Any~~] A person who willfully and knowingly
14 injures or destroys or attempts to injure or destroy an
15 intrastate pipeline facility shall upon conviction be subject
16 for each offense to a fine not to exceed twenty-five thousand
17 dollars (\$25,000) or imprisonment for a term not to exceed
18 fifteen years, or both.

19 H. [~~Any~~] A person who willfully and knowingly
20 damages, removes or destroys [~~any~~] a pipeline sign, right-of-
21 way marker required by the Pipeline Safety Act or [~~any~~]
22 regulation or order issued [~~thereunder~~] pursuant to that act
23 shall upon conviction be subject for each offense to a fine of
24 not more than five thousand dollars (\$5,000) or imprisonment
25 for a term not to exceed one year, or both. "

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1 Section 13. Section 70-3-20 NMSA 1978 (being Laws 1969,
2 Chapter 71, Section 10) is amended to read:

3 "70-3-20. PIPELINE SAFETY ENGINEER AND STAFF. --The
4 [~~commission~~] division shall appoint a professional engineer who
5 shall have at least five years' actual experience in the design,
6 construction, maintenance and operation of oil or gas pipeline
7 facilities and who shall be designated "pipeline safety
8 engineer". The [~~commission~~] division shall retain such other
9 personnel as may be necessary to carry out the provisions of the
10 Pipeline Safety Act, and the [~~commission~~] division shall,
11 subject to state laws and [~~regulations~~] rules covering
12 classification and compensation of state employees, be empowered
13 and authorized to fix the compensation to be paid the pipeline
14 safety engineer [~~and~~]. The compensation of other personnel
15 employed under the authority of this section shall be subject to
16 the [~~state~~] Personnel Act."

17 Section 14. A new section of the Pipeline Safety Act is
18 enacted to read:

19 "[NEW MATERIAL] ENFORCEMENT. --The division:

20 A. shall enforce rules set by the ~~commission~~
21 pursuant to the Pipeline Safety Act;

22 B. may make investigations consistent with the power
23 to enforce the provisions of the Pipeline Safety Act and may
24 enter public or private property at all reasonable times. The
25 results of an investigation shall be reduced to writing if an

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1 enforcement action is contemplated. A copy of the writing shall
2 be furnished to the operator of the oil, hazardous liquid or gas
3 pipeline facilities investigated before an enforcement action is
4 initiated; and

5 C. may require a person subject to the Pipeline
6 Safety Act to maintain records, file reports and develop plans
7 for inspection and maintenance of oil, hazardous liquid or gas
8 pipeline facilities."

9 Section 15. Section 70-5-9 NMSA 1978 (being Laws 1970,
10 Chapter 65, Section 2, as amended) is amended to read:

11 "70-5-9. ANNUAL LICENSE FEES--INSPECTION FEES.--

12 A. For the purpose of defraying the expenses of
13 administering the laws relating to the use of CNG in motor
14 vehicles or the LP gas industry, ~~each~~ a person, firm or
15 corporation, at the time of application for a license and
16 annually thereafter on or before December 31 of each calendar
17 year, shall pay to the bureau reasonable license fees as set,
18 classified and defined by the bureau for each operating
19 location. Provided, the total annual fees charged ~~[any one]~~ a
20 licensee for a combination of LP gas activities at one location
21 and subject to licensure under this section shall not exceed
22 three hundred fifty dollars (\$350), and the fee charged for
23 ~~[any]~~ a single activity or operation as set, classified and
24 defined by the bureau shall not exceed one hundred fifty dollars
25 (\$150).

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